SIGNIFICANT CASES – 2004

1. ***U.S. v KREUTZER,*** United States Army Court of Criminal Appeals, decided 11 Mar 04:

- Pursuant to his pleas, appellant Kreutzer was convicted of violating articles 92 and 121. Contrary to his pleas, appellant was also convicted at GCM of 18 specifications of attempted premeditated murder and premeditated murder.
- A unanimous 12 member panel sentenced appellant to death, a dishonorable discharge, forfeiture of all pay an allowances, and reduction to E-1. The convening authority approved the sentence.

Issues: (1) Whether the military judge erred by denying appellant the services of an expert consultant in capital sentence mitigation, and (2) whether appellant's detailed trial defense counsel were ineffective in their representation of appellant at the sentencing stage of trial.

For purposes of this brief, only the first issue will be discussed.

On 11 Mar 96, defense counsel submitted a "Request for Authority to Employ a Mitigation Specialist in the case of ***U.S. v. Kreutzer***, and Alternative Request for Funding of TDY Costs Associated With Building a Case in Mitigation" to appellant's GCMCA. The GCMCA denied the request for the mitigation specialist, but authorized TDY funds for defense counsel to travel in order to prepare a defense. On 26 Mar 96, the defense counsel moved for the appointment of an expert mitigation specialist by the military judge. The military judge denied the request.

Holding: The judge abused his discretion in denying the defense motion for an expert in capital mitigation in this case. The Court stated that the denial of due process was an error of constitutional magnitude. The Court relied on ***Chapman v. California*, 386 U.S. 18 (1967)** when it stated that the test for prejudice is whether an error was harmless beyond a reasonable doubt. The Court here decided that the judge's error caused substantial prejudice to the appellant by denying him an expert mitigation specialist.

**For a good discussion of mitigation requirements in capital cases, *see* Major Mary M. Foreman, *Military Capital Litigation: Meeting the Heightened Standards of United States v. Curtis*, 174 MIL. L. REV. 1 (2002); Major David D. Velloney, *Balancing the Scales of Justice: Expanding Mitigation Specialists in Military Death Penalty Cases*, 170 MIL. L. REV. 1 (2001).

2. *Crawford v. Washington* – U.S. Supreme Court decided 08 Mar 04.

- The Petitioner, Crawford, was tried for assault and attempted murder. The State of Washington used a recorded statement that petitioner's wife made during a police interrogation to show that the stabbing committed by him was not self-defense. Petitioner's wife did not testify at trial because of the marital privilege. The wife's statement was admitted at trial as a hearsay exception because it bore, "a particularized guarantee of trustworthiness."

Issue: Whether the State's use of the statement by petitioner's wife violated the Confrontation Clause of the Sixth Amendment.

Holding: The U.S. Supreme Court, in a unanimous decision, held that the use of the wife's statement during her interrogation violated the Confrontation Clause. The Court stated, "where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation."

3. *U.S. v. Singh,* 59 MJ 724 Navy Marine Court of Criminal Appeals decided 11 Feb 04.

- Appellant is a citizen of Fiji who moved to the U.S. when she was 18. She enlisted in the Navy when she was 20.

- Appellant pled guilty to unauthorized absence (two specifications), missing movement, and failure to obey an order. She was sentenced at a Special Court-martial to confinement for 150 days, forfeiture of $735.00 pay per month for 6 months, and a BCD.

- Appellant's defense counsel argued that appellant was denied her rights under **Secretary of Navy Instruction**

5820.6 to have her foreign consul notified of her detention and to speak with and receive assistance from the foreign consul.

Issue: Does SECNAVINST 5820.6 create individually enforceable rights in a trial by court-martial?

Holding: No. The court here relied on the Sixth Circuit Court of Appeals in arriving at its holding. The court stated that, "In ***United States v. Emuegbunam,*** 268 F.3d 377, 394 (6th Cir. 2001), the Sixth Circuit Court of Appeals held that the Vienna Convention does not confer individually-enforceable rights upon defendants in federal prosecutions. In its analysis, the court surveyed decisions in other circuits and concluded that as a general rule, international treaties do not create individual rights that may be enforced in the federal courts. *Id*. at 389." The court applied that analysis here and interpreted SECNAVINST 5820.6 similarly. The court also held that even if their conclusion is in error, they, "found no prejudice, much less material prejudice under Article 59(a), UCMJ."